

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

**No. 132**

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THE UNITED STATES OF AMERICA EX REL. CATONI  
TISI, ALIAS LISTA CORTINA, APPELLANT,

vs.

ROBERT E. TOD, COMMISSIONER OF IMMIGRATION AT  
THE PORT OF NEW YORK

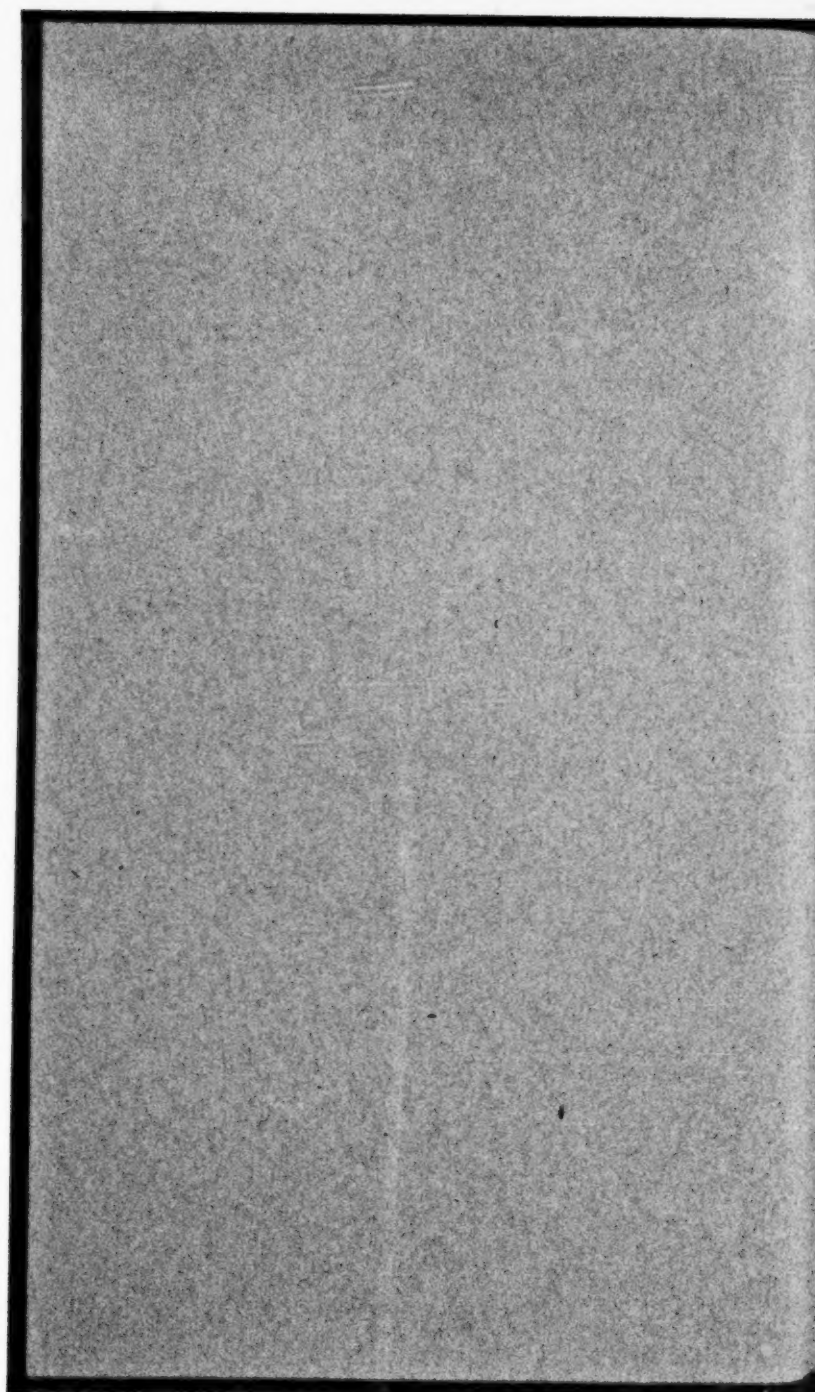
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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FILED OCTOBER 6, 1922

**(29,190)**



(29,190)

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[fol. 1] WRIT OF HABEAS CORPUS—Filed July 20, 1922

The President of the United States of America to Robert E. Tod,  
Immigration Commissioner at Ellis Island, New York Harbor,  
Greeting:

We command you that you have the body of Catoni Tisi alias  
Lista Cortina, or by whatever name he shall be called, before the  
United States District Court at — in the Borough of Manhattan,  
City of New York, Southern District of New York, on the 23d day  
of June, 1922, at 10 o'clock in the forenoon of said day, to do and  
receive what shall then and there be considered concerning this  
purpose.

And we further command you that you certify fully and at large  
to the said Court at the said time and place, the cause of the im-  
prisonment and detention of the said Catoni Tisi, by whatever name  
he shall be called or held, and have you then there this writ.

Witness the Honorable Learned Hand, one of the Judges of the  
United States District Court for the Southern District of New York,  
at New York, the 21st day of June, 1922.

Alex. Gilchrist, Jr., Clerk. (Seal.)

The above writ is hereby allowed.

Dated, New York, June 21, 1922.

Manton, United States Circuit Judge. Hale, Nelles & Shorr,  
Attorneys for the Relator, 80 East 11th Street, New York  
City.

Filed July 26/22

Writ dismissed—deportation stayed provided an appeal is taken  
within twenty days.

By A. N. Hand, J.

U. S. District Court, S. D. of N. Y. Filed July 20/22.

[fol. 2] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed June 21, 1922

To the honorable the judges of the United States District Court for  
the Southern District of New York:

The petition of Catoni Tisi respectfully shows:

First. Your petitioner is an Italian citizen, fifty years of age;  
that he is married and resides in Philadelphia with his wife and two  
children, eleven years and seven years old respectively, both children

born in the United States. He arrived in the United States on the 5th day of January, 1904, and has resided here ever since, with the exception of a two months' stay in Italy in the year 1908.

Second. On or about April 25, 1921, your petitioner was arrested by police officers without a warrant at 2232 Moore Street, Philadelphia, Pa. Thereafter on or about July 28, 1921, a warrant of the United States Department of Labor was issued requiring your petitioner to show cause why he should not be deported. Thereafter on or about August 8, 1921, a hearing was had before an immigrant inspector. Thereafter the Secretary of Labor issued a warrant directing the deportation of your petitioner, upon the grounds that he was in the United States in violation of the Act of October 16, 1918, as amended by the Act of June 5, 1920, in that he was an anarchist, that he believes in and advocates the overthrow of the government of the United States by force or violence, that he is affiliated with an organization which teaches the overthrow of government [fol. 3] ment by force or violence, and that he had in his possession with intent to distribute written or printed matter of the character described in said Act.

Third. Upon information and belief, there was no evidence in such deportation proceeding tending to prove or support any of said charges or findings and said deportation order or warrant was made without power, authority or jurisdiction in the premises and the detention of your petitioner thereunder deprives him of life, liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States. There was testimony in said deportation proceeding that your petitioner, with eight or nine other Italians, were found by police officers at 2232 Moore Street, Philadelphia, folding various circulars and that some (but not all) of said circulars were of the character described in the Act of October 16, 1918, as amended by the Act of June 5, 1920. There was no evidence, however, of any conscious connection of your petitioner with any circular of the prescribed matter or of any knowledge, belief, advocacy or intent of your petitioner or of any membership of your petitioner in any organization.

Fourth. On the morning of June 21, 1922, your petitioner (who had heretofore been at large on bail) was required to surrender himself to the Immigration Commissioner at Philadelphia for deportation and was forthwith transported to New York, where he is now detained in the custody of the respondent at Ellis Island. On information and belief, it is the intention of the respondent to effect your petitioner's deportation immediately. Your petitioner and his attorneys have no copy of the warrant for his deportation, and if application for a writ of habeas corpus were delayed until a copy of such warrant and of the record in the deportation proceedings could be annexed, your petitioner's deportation would already have been effected before habeas corpus could be obtained.

[fol. 4] Fifth. The cause or pretense of your petitioner's imprisonment and restraint, according to the best of his knowledge, informa-

tion and belief, is as aforesaid; and your petitioner is not imprisoned or detained by virtue of any process or mandate issued by any court of the United States or any judge thereof nor is he committed or detained by virtue of a final judgment or decree of any competent tribunal made in a special proceeding instituted for any cause or by virtue of execution or process issued upon a judgment, decree or final order other than as aforesaid.

Wherefore your petitioner prays that a writ of habeas corpus issue directing and commanding the Commissioner of Immigration at Ellis Island, New York Harbor, and any and all persons under his direction or control, wherever your petitioner may be detained, to produce and bring up your petitioner before this Court for hearing and determination by this Court concerning his wrongful detention and restraint, and that your petitioner may have such other and further relief as may be just in the premises.

Catoni Tisi, Petitioner, By Walter Nelles, His Attorney.  
Hale, Nelles & Shorr, Attorneys for Petitioner, Office and  
P. O. Address 80 East 11th Street, Borough of Manhattan,  
City of New York.

[fol. 5] UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

Walter Nelles, being duly sworn, says:

I am one of the attorneys for the petitioner herein and am acquainted with the facts stated in the above petition and know the contents thereof and the same is true to the best of my knowledge, information and belief. This verification is made by me and not by the petitioner in person because the said petitioner is now confined at Ellis Island and it will be impossible to obtain his signature to this petition or his verification thereof in time for the writ prayed for to be effective.

Walter Nelles.

Subscribed and sworn to before me this 21st day of June, 1922, Murray C. Bernays, Notary Public, New York Co., Clerk's No. 156. New York Co. Register's No. 4042. Commission expires March 30, 1924. (Seal.) Murray C. Bernays, Notary Public, New York County.

[File endorsement omitted.]

[fol. 6] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS—Filed July 20, 1922

SOUTHERN DISTRICT OF NEW YORK, ss:

John M. Lyons, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person is produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien is held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the pro-[fol. 7] ceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegations of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien, copies of which are produced and filed herewith as part of this return:

(1) The alien herein was arrested on April 25, 1921, together with twelve others, at 2232 Moore Street, Philadelphia, Pa., when several police officers raided a radical meeting. When arrested by

the local police, the alien herein was seen to be folding, preparatory to distribution, certain literature shown to be propaganda of the United Communists Party of America and knowingly had same in his possession. The United Communist Party of America teaches and advocates the overthrow by force or violence, of the Government of the United States, and all forms of law.

[fol. 8] (2) The alien was examined at Moyamensing Prison, Philadelphia, Pa., on April 29th, with respect to his nationality, etc. He stated he was not a citizen of the United States and that he arrived in the United States on January 5, 1904, and had returned to Italy on March 5, 1908, and returned July 8, 1908 to the United States.

(3) That thereafter, and on May 6, 1921, the Commissioner of Immigration at Gloucester City, N. J., made application for a warrant of arrest of the alien on the grounds that he was in the United States in violation of law in that he was *anarchize*. Attached to said application was an affidavit of Samuel Van Gilder (Officer #4169, 41st District), a copy of which is hereto attached and made a part of this return as hereinabove stated.

(4) That thereafter and to wit, on July 28, 1921, warrant for the arrest of the alien was duly issued by the Acting Assistant Secretary of Labor, commanding that the Commissioner of Immigration at Gloucester City, N. J., take the alien into custody and grant him a hearing to enable him to show cause why he should not be deported in conformity with law for the reason that evidence had been submitted that the alien had been found in the United States in violation of the Act of October 16, 1918, as amended by the Act of June 5, 1920, for the following, among other, reasons:

That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law.

[fol. 9] (5) That on August 8, 1921, in pursuance to warrant of arrest No. 55009/86 dated July 28, 1921, the alien herein was duly accorded a hearing before a Board of Special Inquiry held at 134 South Third Street, Philadelphia, Pa., Counsel at Law, John L. Landberg, Esq. appearing for the alien. The warrant of arrest and the evidence on which same was secured was reviewed by Counsel. The warrant of arrest was fully read and explained to the alien. Upon the said hearing, proceedings were had, testimony taken, and other evidence introduced, as more fully appears by the minutes, a copy of which is hereto attached and made a part of this return. At the conclusion of said hearing, Counsel for the alien herein was given an opportunity to furnish a bond in the sum of \$1,000, and the hearing was continued until the following Wednesday, so that the alien might have an opportunity to enter said bond.

(6) That thereafter a brief for the alien herein was filed by his Counsel, and on September 14, 1921 the Acting Commissioner General of Immigration at Washington requested that the Commissioner of Immigration at the Philadelphia Station submit an opinion as to that portion of the brief which claimed that the five police officers who conducted the raid on the night of the alien's arrest, partook of wine found in the house in question to such an extent that they drank themselves into a stupor. That thereafter, and to wit, on September 19, 1921, as more fully appears by the minutes, a copy of which is hereto annexed and made a part of this return, the Commissioner of Immigration at the Philadelphia Station forwarded to the Commissioner General of Immigration at Washington, a self-ex[fol. 10] planitory report of Inspector Benkhart, who was familiar with the entire matter. Respondent respectfully states that if any partaking of wine occurred in the house in question, it did not occur until after the raid was concluded, and that all the officers were perfectly sober when they entered the house in question, and that the report in one local newspaper of the affair was highly exaggerated. Respondent further states that there was nothing brought out in the very lengthy cross examination of the officers at the hearing, to justify an opinion that their statements were unworthy of credence.

(7) The proofs and record of the proceedings before-mentioned having been duly transmitted to him, the Assistant Secretary of Labor, after a careful examination of said evidence submitted in the case, was of the opinion that the alien is in the United States in violation of law, and that on or about the 23rd day of September, 1921, issued a warrant of deportation directed against the aline herein commanding that the alien be returned to Italy, the country whence he came, in that he has been found in the United States in violation of the Immigration Act of October 16, 1918 as amended by the Act of June 5, 1920, in that:

That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating or teaching the overthrow by force or violence of the Government of the United States or of all forms of law.

(8) That on the 7th day of October, 1921, the Acting Secretary of Labor directed that deportation should be stayed for a period of [fol. 11] thirty days to enable the attorney for the alien to personally present his case to the Secretary of Labor provided the sureties on the bond would make written consent to such extension.

(9) That on November 15, 1921, the Commissioner of Immigration at the Philadelphia Station was duly directed by the Acting Secretary of Labor to proceed with the deportation of the alien herein under the outstanding warrant which had already been issued.

(10) That on December 8, 1921, the Commissioner of Immigration at the Philadelphia Station was duly directed by the Assistant Secretary of Labor to defer deportation of the alien herein until he had received further instructions from the Bureau, and that on January 6, 1922 the Assistant Secretary of Labor duly ordered the Commissioner of Immigration at the Philadelphia Station to proceed with the deportation of this alien.

(11) That on June 10, 1922, in reply to a letter of the alien herein of June 6, 1922, the Assistant Secretary of Labor advised the alien that the department had considered his case on several different occasions, and each time found him guilty of the charge upon which his deportation was directed, and as no particular reason is given in the alien's letter showing why a rehearing should be granted, the Department further advised that it could not consider the alien's request, and that on June 10, 1922 the Bureau again referred to the case of the alien herein and directed the Commissioner of Immigration at the Philadelphia Station to proceed with the deportation of this alien as soon as possible.

(12) The proofs and record of the proceedings before mentioned [fol. 12] having been duly transmitted to him, the Secretary of Labor duly found that the alien is in the United States in violation of law, and directed the deportation of the said alien, and for cause of the detention of the said alien complained of in the petition herein, deponent says that the said alien is and since the receipt of said order of deportation has been held under and in obedience to the writ of habeas corpus issued herein.

(13) Reference is made to the certificate of admission of alien which is attached hereto and made a part of this return, which shows the place of birth of the alien to be Sigillo, Italy.

(14) Respondent respectfully denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations of the petition marked and numbered paragraph "first".

(15) With respect to allegation second of the petition herein, alleges the true fact to be that the alien was examined before an inspector and that the Secretary of Labor directed the deportation of the alien herein upon the grounds as fully set forth in paragraph "seven" of the return herein.

(16) Respondent respectfully denies each and every allegation of paragraph marked and numbered "third" of the petition, and denies each and every allegation of paragraph marked and numbered "fourth" with the exception that the alien was enlarged on bail and surrendered on June 21, 1922.

Wherefore, deponent prays that a writ of habeas corpus herein be [fol. 13] dismissed and the said alien remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation.

John M. Lyons.



Sworn to before me this 20th day of July, 1922. (Sgd.)  
 Carl Brecher, Notary Public, Kings County. (Seal.)  
 Clerk's No. 496 Register's No. 3178. N. Y. Clerk's No.  
 317 Reg's No. 3340. Commission expires March 30, 1923.

[File endorsement omitted.]

[fol. 14] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
 NEW YORK

[Title omitted]

TRAVERSE—Filed July 20, 1922

The relator above named by way of traverse to the return herein,  
 alleges upon information and belief:

First. Hereby realleges and reincorporates each and every allegation  
 contained in his petition herein verified June 21, 1922, and  
 alleges that the relator does not read, write, speak or understand any  
 English.

Second: Alleges upon information and belief that said return and  
 annexed record does not state facts sufficient to warrant the continu-  
 ance of the relator's detention.

Wherefore, the relator prays that he may have his liberty.

Catoni Tisi, Relator, Isaac Shorr, His Attorney. Hale, Nelles  
 & Shorr, Attorneys for Relator, Office & P. O. Address, 80  
 East 11th Street, Borough of Manhattan, City of New York.

[fol. 15] UNITED STATES OF AMERICA,  
*State, County, and Southern District of New York, ss:*

Isaac Shorr, being duly sworn, says:

I am one of the attorneys for the relator herein. I have read the  
 foregoing document and know the contents thereof and the same is  
 true of my own knowledge except as to the matters therein stated to  
 be alleged upon information and belief and as to those matters I  
 believe it to be true. The reason this is verified by me instead of  
 the relator is that the return was not served until the morning of  
 July 20th, when the motion was returnable, and the relator is at  
 Ellis Island, where he could not be reached in time to have him  
 verify this traverse.

Isaac Shorr.

Subscribed and sworn to before me this 20th day of July,  
 1922. Murray C. B———, Notary Public, N. Y. Co.

[File endorsement omitted.]



[fol. 16]

Form 565

APPLICATION FOR WARRANT OF ARREST UNDER SECTION 19 OF THE  
ACT OF FEBRUARY 5, 1917—Filed July 20, 1922

M7—166

U. S. Department of Labor  
Immigration Service

No. 4088/19 (Copy C-CHW).

(Place) Gloucester City, New Jersey.

May 6, 1921.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Catoni Tisi, or Lista Cotina, an alien, who claims to have arrived at New York on January 5, 1904, per SS Lombardia, the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified evidence setting forth the facts within the knowledge of the informants).

The above-named alien is in the U. S. in violation of law in that he is — anarchize.

See affidavits attached.

(2) The present location and occupation of above-named alien are as follows: Moyamensing Prison, Phila., Pa.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said rule, as to the landing and entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature:) (Signed) J. L. Hughes, (Official title:) Commissioner. Enclosures.

[File endorsement omitted.]

[fol. 17] WARRANT—ARREST OF ALIEN—Filed July 20, 1922

M7—166

United States of America

Department of Labor

Washington

No. 55009/86.

To J. L. Hughes, Commissioner of Immigration, Philadelphia, Immigration Station, Gloucester City, N. J., or to any Immigrant Inspector in the Service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Catoni Tisi, or Lista Cotina, who landed at the port of New York, N. Y., ex SS "Lombardia," on the 5th day of Jan. 1904, has been found in the United States in violation of the Act of October 16, 1918 as amended by the Act of June 5, 1920, for the following among other reasons:

That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law.

I, Theodore G. Risley, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of \$1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 28th day of July, 1921

(Signature:) Theodore G. Risley, Acting Secretary of Labor.  
R. N.

[File endorsement omitted.]

[fol. 19] TRANSCRIPT OF TESTIMONY TAKEN IN THE CASE OF CATONI TISI OR LISTA COTINA, UNDER DEPARTMENTAL WARRANT NO. 55009/86, DATED JULY 28, 1921, AT 134 SOUTH THIRD STREET, PHILADELPHIA, PA., AUGUST 8, 1921.

M 7—166

Present: A. G. Benkhart, Inspector; H. Y. Davis, Secretary; L. P. Giordano, Interpreter; John L. Landberg, Counsel for Alien.

Warrant of arrest and evidence on which same was secured reviewed by Counsel.

Warrant of Arrest read and explained to alien.

Inspector (to the alien):

Q. Do you understand this warrant that has been read to you?

A. Yes.

(Alien sworn.)

Q. What is your name?

A. Catoni Tisi.

Q. Have you any other name you are known by?

A. No.

Q. How old are you?

A. 49 years; born June 5, 1872. (Alien produced his passport.)

Q. Are you married?

A. Yes.

Q. How many children have you?

A. Two children.

Q. And what are their ages.

A. The first is 11, and the second is 7.

Q. What are their names?

A. The first is Ferruccio and the second is Saprtica.

Q. What is your wife's name?

A. Anna.

Q. Where do you live?

A. 1100 Federal Street.

Q. What is your occupation?

A. Shoemaker.

Q. By whom are you employed?

A. I have my own place at #221 South 8th Street.

Q. Now, where were you born?

A. I was born in Sigillo, Province of Perugia, Italy.

[fol. 20] Q. And where was your wife born?

A. She is from the Tyrol, Italy.

Q. Where were your children born?

A. In Philadelphia.

Q. When did you arrive in the United States?

A. January 5, 1904. Then I returned in 1908, and then stayed in Italy two months and returned here in 1908, and since then I have been here.

Q. To what organizations or societies do you belong?

A. I belong to the Shoemakers Union. The Italian Progressive Institute, Incorporated under the laws of Pennsylvania.

Q. Do you belong to the Union of Italian Workers?

A. No; I don't.

Q. Where were you arrested?

A. I was arrested at 2232 Moore Street.

Q. How many persons were arrested at that time you were arrested?

A. I cannot say for sure whether there were eight or nine.

Q. Was that not a meeting of a group of the United Communist Party of America?

A. I don't know.

Q. Was there a meeting going on at the time you were arrested?

A. I don't know, because as soon as I entered there they gave me a drink and we were discussing daily occurrences.

Q. Were you seated at a table among the others that were gathered there?

A. I was standing.

Q. Were you sitting down at all during the time you were in that room with the other people?

A. I don't remember whether I ever sat or not, but, at the time the Officers came in, I was standing and ready to go.

Q. Wasn't that in the house of a person named Giuseppe Baldassarre?

A. Yes. I don't know if it is his property.

Q. Do you know what was on the table at the time you were in the room with those other people you mention?

A. There were a lot of papers on a table, but I don't know what they were, because I cannot read English.

Q. Were all those papers in English or Italian?

A. They appeared to me as if they were in English, but I did not pay much attention to it.

Q. Are you a member of the United States Communist Party of America?

A. No.

[fol. 21] Q. Will you explain to me what you were doing at the time you were in that room with Joseph or Giuseppe Baldassarre and others who were arrested?

A. Baldassarre owed me money, and I went ther- that night to collect this money. While I was there I received \$25.00 on account of what Baldassarre owed me, then they offered me a drink and I was there holding a conversation with them about the daily happenings and I was about to go when the Officers came in and arrested me.

Q. You were arrested along with the others that were assembled in that room at the time; weren't you?

A. Yes sir.

Q. Do you believe in the principles of the Communist Party of America?

A. No.

Q. Do you own any real estate?

A. No; I have only a Shoemaker's Shop.

Q. What is your business worth?

A. About a thousand dollars. We are in partnership.

Q. How much is your equity in that business?

A. About five hundred dollars.

Q. Have you money in bank?

A. I just have \$100.00 with the Postal Saving Fund.

Q. Approximately, what are you worth?

A. About \$700 or \$800 is what I am worth.

Q. Now, at what port did you arrive?

A. New York.

Q. On what vessel?

A. The first time, the "Lombardia," and the second time, the Germania, of the Fabre Line.

To Counsel: Do you wish to question your client?

Counsel: Yes.

By Counsel:

Q. Mr. Tisi, have you served in the Italian Army?

A. Yes.

Q. How many years?

A. Six months. I served that short time because I have no other brothers.

Q. Have you been honorably discharged from the Italian Army?

A. Yes. I was discharged on the 26th of December, 1893.

Q. Is this your discharge? (Handing paper to alien.)

A. Yes.

Q. Mr. Tisi, had you known Baldassarre before you called on him on that date to collect some money?

A. Yes, I—

[fol. 22] Q. How much money did he owe you?

A. \$100.00.

Q. When you went there did you know in advance that any meeting was planned or intended to be held there?

A. No; I did not.

Q. How long were you there before the officers came in to make the arrest?

A. About thirty or forty minutes.

Q. Did many of those persons drink wine that evening there?

A. They were all drinking.

Q. As far as you are concerned, you made a business visit to that house that night?

A. That is all; just for business.

Q. Can you read English?

A. No.

Q. Did you know or understand any leaflets or stickers that were on the table at that time?

A. No; I did not know.

Q. Did you see the leaflet I am showing you now on the table

there that night? (Exhibiting circulars "May Day of Revolution" and May Day. Red Labor Day.")

A. I don't know, because they were all piled up.

Q. Did you see the stickers there entitled "Hail May Day" and Unemployed Mobilize"? (Exhibiting same to witness.)

A. I don't know. I did not observe them.

Q. Did any one of those persons tell you anything about this literature, leaflets, and stickers on the table?

A. No. We didn't talk about those leaflets or stickers at all. We just spoke of business.

Q. At what time did you get to that house?

A. About 9.30.

By Inspector (to alien):

Q. Have you ever taken out any naturalization papers?

A. I took the first paper in Wilkes-Barre, Pa., but they refused to give me the second paper, because I don't know the language.

By Counsel (to alien):

Q. Mr. Tisi, are you making any efforts to learn the English language now?

A. No; I am not.

Q. If you will learn how to speak English, will you make an effort to get your second papers?

A. Yes; if I can, because it is useful to me.

Q. So you intend to become naturalized and remain in America the rest of your life?

[fol. 23] A. Yes.

---

Inspector: I shall call Officer VAN GILDER to testify in this case.

(Witness sworn.)

Q. What is your name?

A. Samuel Van Gilder.

Q. What is your occupation?

A. Patrolman.

Q. To what district are you attached?

A. 41st Police District.

Q. Will you state if you have ever seen this alien before this?

A. I did.

Q. When, where and under what circumstances did you see him?

A. On April 25th, about 10.40 P. M., I, with Officers McGoldrick, McCormack and Beach raided the Radical meeting being held at 2232 Moore Street. When we got in the dining room there were about ten or eleven men sitting around the table, which appeared to be a meeting there, and they were all folding circulars marked "May Day of Revolution" and "May Day. Red Labor Day." There was quite a good deal of other stickers and papers and literature piled on the table; and we then placed them all under arrest.

Q. Did you observe particularly this alien before you in the act of folding these circulars?

A. He and the rest of them were all folding circulars.

Q. All were folding circulars?

A. Yes sir.

Q. I understand you to say all in the room at the time were folding circulars?

A. Yes.

Q. And you positively swear to that?

A. Yes sir.

Q. And because of that you took him with the rest into custody and took them to the Station House; is that right?

A. Yes.

Q. Do you positively identify this alien before you as one you saw at the time folding these circulars in question?

A. Yes.

Counsel:

Q. Officer, were these eleven men standing or were they seated?

A. Seated.

Q. Around the same table?

A. Yes.

[fol. 24] Q. How long was the table?

A. I can't tell you just how long it was.

Q. As long as this desk?

A. It was a round table.

Q. How wide would the diameter of the table be?

A. I could not tell you just how wide.

Q. As wide as this desk?

A. No; I could not tell.

Q. Was it an ordinary round dining room table?

A. Yes.

Q. And all eleven men were seated around that table?

A. Within reach of that table.

Q. And when you came in how long were you in the room before you made the arrest?

A. About two minutes.

Q. As you came in was Tisi facing you or was he seated sidewise towards you?

A. He was sitting on the right hand side as I came in.

Q. And as you came in did your eye circle the table and see the hands of ten or eleven men folding papers?

A. Yes.

Q. All were folding papers?

A. Yes. We came in unawares. They didn't see us coming in.

Q. And all eleven men were doing the same work?

A. Yes.

Q. What kind of paper was Tisi folding at the time?

A. He had both "May Day of Revolution" and May Day. Red Labor Day." in front of him.

Q. That is the first time you ever saw him at that house; is that right?

A. Yes.

Q. And the first time that you saw the other men?

A. Which other men.

Q. That you found in the house?

A. Yes.

Q. They were all new to you?

A. Yes.

Q. How many other men were folding "May Day of Revolution" leaflets?

A. I said they were all folding them circulars. I didn't know which ones were folding "May Day of Revolution" or which "May Day Red Labor Day."

[fol. 25] Q. When you came in and they saw you what did all of these ten or eleven men do with the leaflets?

A. Their hands were still on the table, and they stopped when we entered.

Q. They dropped the leaflets?

A. Yes. Some of them did and some of them did not.

Q. What did Tisi do?

A. It appeared to me he had his hands on the table.

Q. Near the leaflets?

A. Yes.

Q. What was the distance between the place where the table was standing and the door through which you came in; about how many feet?

A. About two feet.

Q. About that from the door?

A. About two feet.

Q. Now, at the time you actually made the arrest, did you put your hands on some of the papers?

A. I did; yes.

Q. Did you put your hands on Tisi?

A. I don't know whether I did or not.

Q. What is the closest you were standing to him when you came in; how close to him did you get up?

A. It may have been one foot or it may have been three feet. I can't tell you exactly.

Q. When you came up to the table, his hands were not folding leaflets at the time?

A. When we entered he was folding leaflets.

Q. When you came up to the table his hands were resting on the table?

A. When we had entered he was folding leaflets, and then he stopped,—after fifteen or twenty seconds later.

Q. What other papers were on the table besides leaflets?

A. All this literature here, stickers, circulars—

Q. Did you see any Italian papers on the table?

A. Yes; quite a good deal.



Q. How do you know, Officer, whether or not Tisi was not folding or playfully handling some other papers, and not leaflets?

A. I say he was folding leaflets.

Q. You saw him folding leaflets in spite of the fact that ten or eleven men were sitting crowded around the table with their backs intercepting your view from what was going on on the table?

A. I could see right on that table when I entered the door. They were all folding circulars.

[fol. 26] Inspector:

Q. Now, Officer, the circulars you refer to were they entitled "May Day. Red Labor Day" and "May Day of Revolution?"

A. They were; some of them.

I will introduce as evidence and make same a part of this record, marked "Exhibit S1" and "Exhibit S2" circulars entitled "May Day of Revolution" and "May Day. Red Labor Day."

Q. Now, Officer, these three bundles before you here comprises the literature found on the table at the time you took this alien into custody; does it not?

A. It does.

(List of Literature Attached.)

---

Inspector: I will call Officer McCORMACK as a witness in this case.

(Witness sworn.)

Q. What is your name?

A. Daniel McCormack.

Q. What is your occupation?

A. Patrolman, attached to the 41st District.

Q. Have you ever seen this alien before you before this time?

A. On the 25th of April at 2232 Moore Street.

Q. Under what circumstances did you see him there?

A. Why, we went there to raid the house at 2232 Moore Street. He was one around the table folding literature at the house there when we entered.

Q. Did you see him folding the literature?

A. Why, his hands were on the table and the literature all around the table there and every one of them folding.

Q. Was there literature in front of each one?

A. Each one at the table.

Q. Was it in such position as to indicate that each one was folding this literature?

A. Each one had different piles.

Q. Did you actually see him folding literature?

A. Yes. When we came in they were all folding.

Q. When you came in they were all folding?

A. Yes sir.

Q. And was the literature this alien before you was folding this which I show you here, "Exhibits S1" and "2"?

A. Yes sir.

Q. Was there other literature on the table?

A. Yes; it was stickers and papers.

[fol. 27] Q. And these three bundles of literature I show you here were they on the table?

A. Yes; on the table.

Q. How many Officers were with you at the time you made this arrest?

A. Why, Officer McGoldrick, Officer Powers, Officer Beach, Officer Van Gilder and myself.

Q. Did you all enter the room at the same time?

A. All right behind each other; pushed through the door.

Counsel:

Q. How many men did you see sitting around the table?

A. Why, about eleven.

Q. And what were they all doing?

A. All folding this literature.

Q. Did you see twenty-two hands folding literature?

A. Well, they were all there; they had the bills right in front of them. You could see them folding them right up.

Q. You are positive you saw them all folding papers on the table?

A. Yes.

Q. Did you see wine glasses, wine bottles on the table?

A. Oh; Yes.

Q. How many wine glasses were on the table?

A. Why, I couldn't tell you. About—

Q. About? Over ten?

A. I guess there was around four or five.

Q. How many wine bottles?

A. One, I believe. I don't know whether it was a bottle or a pitcher.

Q. Did you see any of the men in the act of drinking wine when you came in?

A. No.

Q. No one touched the wine?

A. I did not see them.

Q. You had never seen this man Tisi before that night?

A. Never before.

Q. Tell us what he was actually doing when you came in?

A. His hands were upon the table around that literature.

Q. But he was not folding at the time you came in?

A. They seemed to be all folding.

Q. But you saw his hands on the table?

A. Yes.

[fol. 28] Q. And you saw some literature just as you came in the door. You didn't see him in the act of folding literature. Were

his hands in the position that my hands are now on the table? (Indicating.)

A. Yes; they were all up on the table like that. (Illustrating)—Some folding and some handling.

Q. I am not talking about what others were doing. I am referring to Mr. Tisi. Now, Officer, look at my hands; Mr. Tisi was sitting in the position I am now with my hands resting on the table (illustrating); is that right?

A. Why, when we came in they were all folding. I didn't look at no particular man; walked in and didn't look at any particular man.

Q. Now, Officer, we are not concerned just now with any other man. All we are concerned with is what *this man* did actually at the time you came in? You have testified he was sitting with his hands on the table?

A. Oh; Yes sir.

Q. Now, you would not say positively, under oath, when you came in Tisi was actually folding literature of the kind that is spoken of here?

A. Oh; yes; because there were bundles there and you could see them.

Q. You say you did not pay any particular attention to any man?

A. Sure not.

Q. You might be mistaken as to what Tisi was doing?

A. No.

Inspector:

Q. Officer, what you wish to testify to is that you saw this man folding these circulars I have shown you, and that afterwards you saw his hands resting on them; is that true?

A. Yes; the same as the rest of them.

Inspector: Now, I shall call Officer McGoldrick.

(Witness sworn.)

Q. What is your name?

A. John McGoldrick.

Q. What is your occupation?

A. Patrolman; attached to the 41st Police District.

Q. Officer, have you ever seen this alien before you before this time?

A. Yes sir.

Q. When, where and under what circumstances?

A. I seen him in the house at 2232 Moore Street. We were sent there to make a raid on these Bolsheviks, as they were called, and as we entered the house this man, with about ten other men, was sitting around the table, and as we entered the door they had literature like this in front of them (indicating Exhibits S1 and S2)

and they had *ethm* like this (indicating), and as we entered each man dropped his hands. I walks around to the table and picks up pieces of literature and seen what it was, and we ordered them [fol. 29] then to put their hands on the table and then we searched them; and one of the officers went out and phoned for the wagon and we sent them to the Station House and gathered up all the literature and brought it with us.

Q. The literature referred to is comprised in those three bundles there; is it not?

A. Yes. That's the stuff we took from the house that night.

Q. And do you positively swear that at the time you entered the room at the time stated you saw this person sitting before you here, Mr. Tisi, folding these circulars that you refer to?

A. Yes.

Counsel:

Q. Officer McGoldrick, how many officers came in with you?

A. Four besides myself.

Q. Who came in first?

A. I did.

Q. Who followed you?

A. That I could not say. I don't know which of the other Officers followed me.

Q. And all the officers followed one another?

A. Yes; they all came in right behind me.

Q. When the men seated around the table saw the first officer come in, which was yourself, they ceased folding up the leaflets?

A. Well, I could not say. No; they didn't all cease. Some of them dropped what they had in their hands on the table. It just took about a second or so for every officer to be in the room covering the men, because under reading of some of the literature it looked as if they were pretty desperate characters, and we didn't lose much time to find out what was going on.

Q. What was Tisi doing when you entered the room?

A. He was folding the literature. He had the literature in his hands like this (illustrating), as I showed you before, and dropped it as we came in, to look up.

Q. How do you know he was folding the literature?

A. The literature was all folded, as I showed it to you here, and the piece he had directly in front of him was partly open.

Q. How far away from the door was he sitting?

A. I judge he was about five feet.

Q. As you entered the doorway, could you see from the doorway what was actually on the table?

A. No; not exactly. I could not distinguish what the stuff was until I would go over and pick it up.

Q. But when you did approach the table, the piece of literature you spoke of was no longer in Tisi's hands?

A. No, it was not in his hands then. His hand was on it on the table,—resting on it like this (illustrating). We ordered them to

keep their hands on the table, because we thought they might draw some weapons.

[fol. 30] Q. In other words, Officer, when you approached the table and were in a position to see what the men were actually doing, at that time this man, Tisi, was not in the act of folding leaflets?

A. He was in the act, yes.

Q. You testified a moment ago that he was not folding leaflets; that his hand was resting on the table. Now you say he was folding. This true?

A. I showed you with a piece of the literature, and the manner in which the man had the literature in his hand, and I told you he had dropped the literature and kept his hand on the piece. I didn't see him exactly turn the literature over and fold it, but I did see the literature after that in front of him and his hand on the piece, which I illustrated.

Q. Was he in the act of conversation with the other men when you came in?

A. That I could not say.

Q. Was any one drinking at the time you came in?

A. That I could not say.

Q. There were wine glasses on the table?

A. I didn't pay any attention to the wine glasses.

Q. Officer, it is possible that when you came in this man may have been handling these leaflets playfully while talking to the other men, so as to give you the impression that he was folding them, or in the act of folding them; that may have been the case?

A. From the manner in which the table looked at the time we entered, if you had seen it in the same position as I saw it, you would have concluded that they were all folding them.

Inspector:

Q. Now, Officer, you are willing to positively swear that this alien before you, when you entered the room, was in the act of folding these circulars, Exhibits S1 and S2, that are shown you here?

A. Yes, sir.

---

Inspector: I shall call Officer POWERS to testify.

(Witness sworn.)

Q. What is your name?

A. John J. Powers.

Q. What is your occupation?

A. Patrolman, attached to 41st Police District.

Q. Officer Powers, have you ever seen this person sitting before you before?

A. Yes; I saw him on the night of the raid at 2232 Moore Street.

Q. Under what circumstances did you see him there?

A. I was on the beat that night and met Officer McCormack and Officer McGoldrick on the corner, and they told me what was their

mission up there, and they took me along with them. So we went up to the house, and on entering seen eleven men sitting around the table folding literature; so we told them all to put their hands on [fol. 31] the table, to keep their hand on the table, and went through them to see that they didn't have any guns or anything. I didn't know the Officer now, but one phoned for the wagon, and we took them all, took literature and all.

Q. Now, what was this particular person here, Mr. Tizi, doing at the time you entered the room?

A. The time I entered the room, he was folding circulars.

Q. Did you see him folding circulars?

A. Yes; I did.

Q. Were the circulars like this I show you here, marked Exhibit-S1 and S2?

A. Yes sir.

Q. Were all these sitting around the table engaged the same way?

A. They were, except one man, who was writing in a book.

Q. You don't know which that man was?

A. It was not this man.

Q. Are you willing to positively swear that this man before you, Mr. Tizi, was seen by you at the time you entered the room, folding these circulars I have shown you?

A. Yes.

To Counsel: Do you wish to cross-examine this man?

Counsel: Yes.

To Witness:

Q. Officer Powers, where was the book in which that man was writing?

A. That was at the far end of the table.

Q. The same table at which the other men were sitting?

A. Yes sir.

Q. So that the other officers who have testified that all the men were folding leaflets were in error?

A. I wouldn't say that he made a mistake. I am telling you what I seen. I saw ten men folding leaflets and the other man was writing in a book.

Q. How many were drinking at the time?

A. I didn't see anybody drinking.

Q. Were there any wine glasses on the table?

A. There was a pitcher.

Q. Filled or half-filled?

A. I didn't see that.

Q. You officers as you came in were "Goose-stepping" into the room, one following the other?

A. Yes.

[fol. 32] Q. Officer McGoldbrick was first?

A. Yes.

Q. Who was second?

A. I believe it was Officer Van Gilder.

Q. Who was third?

A. I believe I was.

Q. Who was fourth?

A. I couldn't say that. I didn't look who was behind me.

Q. So that you were the third man as you came in?

A. Yes.

Q. And as you came in the door did the first officer step aside?

A. Why it was a room.

Q. I know; but as you came in did the first officer step aside?

A. We got around the table. I guess we were in there fifty seconds before any of them took notice to us.

Q. What was this man doing as you just entered the door?

A. He was folding circulars.

Q. Where were his hands?

A. On the table.

Q. Doing what?

A. Folding circulars.

Q. What was he doing when you approached the table?

A. He was folding circulars, and then he laid it down; we told them to keep their hands on the table.

Q. You had never seen this man before that night?

A. No; I did not.

Q. Did you see him since his arrest?

A. I saw him the following morning at Magistrate McCleary's Court at Central Station.

Q. Did you count how many people were sitting around the table?

A. About eleven around there.

Q. Who was the man who was writing in the book?

A. I don't know his name?

Q. How far away from Tisi was he sitting?

A. I guess he was not sitting more than three feet around the table. It was a round table.

Q. Did you see this man talk to the other men?

A. No; I don't know.

[fol. 33] Q. Was there no conversation?

A. Not that I heard.

Q. Was it all silent?

A. All silence.

Q. Would you not say that this man was sitting at a table talking to his friends there and having his hands on the table near literature in a manner that would give you the impression that he was folding it?

A. This man was at the table when I entered folding literature; this man right here.

Q. And you were the third man that came in?

A. Yes, sir; when I came in.

Q. So Officer McGoldrick was wrong when he testified that as he approached the table the man's hands were on the table and not folding literature?

A. I am telling you what I seen, and not what Officer McGoldrick saw.

Inspector:

Q. I shall ask you, Officer; there was other literature on the table at the time; was there not?

A. Yes; there was.

Q. These three bundles you see there comprise the literature that was on the table, besides these circulars these men were folding?

A. Yes; all on the table.

Q. When you entered the room did this alien appear to you as being one of the number engaged in a similar occupation at the same time; in other words, folding circulars preparatory to distributing them?

A. Yes sir; he did.

To Counsel: Now, I wish to ask you Counsel, do you intend to furnish a brief in this case?

Counsel: How much time will I have to file a brief?

Inspector: How much time do you need?

Counsel: I can work up a brief in a week from now. I may get it up by Saturday.

Inspector (to alien): Are you able to furnish a bond in the sum of \$1,000?

Counsel (for the alien): Yes; on Wednesday.

Inspector: We will continue this hearing then until Wednesday to afford you an opportunity to enter a bond.

I certify that the foregoing is a true and correct transcript of the shorthand notes taken by me in the above case at the time and place stated.

H. Y. Davis, Secretary.

U. S. District Court, S. D. of N. Y. Filed July 20, 1922.

[fol. 34] CERTIFICATE OF ARRIVAL—Filed July 20, 1922

98801/122.

4088/19.

(Copy—CHW.)

M 7/166

Department of Labor

Immigration Service

Ellis Island, N. Y. H., March 28, 1922.

Commissioner of Immigration,  
Philadelphia Immigration Station,  
Gloucester City, N. J.:

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:



- (1) S. S. Germania; Line, Fabre.
- (2) Date arrival, July 3, 1908; Manifest No. 5-30; Class, 3rd; Naples, Italy.
- (3) Port at which admitted, New York.
- (4) Name, Tisi, Catone; age 35; sex Male.
- (5) Married, M.; occupation, laborer; able to read and write, no.
- (6) Native of Italy; race, Italian.
- (7) Last permanent residence, Sigallo, Italy—wife, Anna Marto.
- (8) Destination, Scranton, Pa.
- (9) By whom passage paid, Self; money brought, \$30.
- (10) Whether in U. S. before, yes; when 1907-1908; where, Scranton, Pa.
- (11) To whom going, Home, 103 Locks Ave.; condition of health, Good.
- (12) Height 5' 7; complexion, Brown; color of hair, Chestnut.
- (13) Color of eyes, Maroon; identification marks, Scar on right cheek.
- (14) Place of birth, Sigillo, Italy; examined by Inspector Mitchell.
- (15) How admitted, Primary; accompanied by —.
- (16) Remarks: —.

(Signature:) (Signed) Byron H. Uhl. (Official title:) Assistant Commissioner. (Copy. CHW.)

[File endorsement omitted.]

fol. 35] EVIDENCE; EXHIBIT J2—Filed July 20, 1922

M 7/166

May Day of Revolution;  
 May Day if revolution is here;  
 May Day when the workers of the world think of liberty;  
 When they form their ranks as a challenge to the masters;  
 When they come out in their millions and demonstrate the  
 solidarity of the workers;  
 This year the American workers must all demonstrate.  
 They have good reason. The bosses have challenged the millions  
 of workers in the country. They have organized to crush the work-

ers; they want to exploit them more. In their greed they intend to grind out more profit from their bones. They want to know who shall be masters in America.

Then let us show them who will be the masters;

Let us tell them that the system must be changed;

Let us tell them that we will change it by revolution;

There is only one way there is no other.

In Europe the workers are carrying on their fight;

With gun in hand they are fighting their governments determined to overthrow them and set up workers' governments that shall represent only the workers; in Italy and Germany, the workers face the guns of the government ready to die to determine their freedom from the brutal system.

In England, France and Spain they are preparing for the day when the clash with the government must come. In India, Egypt, in the near and far east the workers and the oppressed people are organizing their ranks to drive out the imperialist robbers and cut throats who hold them enslaved. They are learning to use force against force. There is no other way.

Only in Soviet Russia the workers may celebrate May Day as Free men. Only in Soviet Russia there is no exploitation; in Soviet Russia the workers rule; attacked by the whole capitalist world the workers of Soviet Russia have stood fast and defended the revolution. The revolution is spreading across the globe. It calls to us. Let Us Prepare.

Too long we have stood the misery the bosses have forced on us; We have not forgotten the war which killed and crippled for life millions of workers and filled the bosses pockets with gold. We have [fol. 36] not forgotten the war and all its fake promises. We have not forgotten and we will not forget. The bosses are preparing a new war. Millions of men are unemployed and the bosses are afraid of them.

And well they may be afraid.

We American workers will no more stand the tyranny of the bosses and of their government. We have had enough. The United States Government stands for the bosses against the workers; it uses the law making bodies, the courts and its troops against the workers.

Then we must destroy the United States Government.

We must overthrow it and put *it* in its place a workers' government. We must uphold the workers' government with a strong army to crush the bosses and all who support them.

We must prepare for the revolution, there is no other way.

May Day of the revolution is here.

Let us join the ranks of the fighting American workers.

Let us proclaim our solidarity with the revolutionary workers of Germany and Italy.

Let us proclaim our solidarity with the workers of the entire world.

Let us prepare for the revolution.

United Communist Party of America.

[File endorsement omitted.]

[fol. 37] AFFIDAVIT OF JOHN J. POWERS—Filed July 20, 1922

M 7/166

Detective Bureau, City Hall  
Philadelphia, Pa.

April 30, 1921.

Personally appeared before me, an Immigrant Inspector, John J. Powers, (Officers #4152, 41st District), who makes the following statement:

I have heard read the statement of Officer Van Gilder in respect to the raid at No. 2232 Moore Street, and have to state that it is precisely what transpired, and I make this identical statement.

(The officer signed the stenographer's notes: John J. Powers, #4152.)

Subscribed and sworn to before me this 30th day of April, 1921. Immigrant Inspector.

I certify that the foregoing is a true and correct transcript of the shorthand notes taken by me in the above matter at the time and place stated.

Harry Y. Davis, Clerk.

AFFIDAVIT OF JOHN SOLARI—Filed July 20, 1922

Detective Bureau, City Hall,  
Philadelphia, Pa.

April 30, 1921.

Personally appeared before me, an Immigrant Inspector, John Solari, (Officer #4146), who makes the following statement:

At 10.30, we got a call for the wagon. We were on our way out to do plain clothes work, and we went with the wagon to #2232 Moore Street. When entering the house, I saw the men seated around a table. Officer Van Gilder said "bring them out. They are all under arrest." We brought them out and placed them in the wagon. I went off the beat that I was appointed to.  
[fol. 38] (The fourteen (14) men and women named by Officer Van Gilder were all brought out and placed in the patrol wagon.) We gathered up all the literature from the table and brought that to the patrol wagon with the prisoners. Among the papers seized was this circular (indicating "Exhibit #1," "May day of Revolution.")

Officer signed the stenographer's notes: Officer John Solari, 4146.

Subscribed and sworn to before me this 30th day of April, 1921. A. G. Brinkhart, Immigrant Inspector.

[File endorsement omitted.]

[fol. 39] STATEMENT OF SAMUEL VAN GILDER—Filed July 20, 1922

M 7—163

Detective Bureau, City Hall  
Philadelphia, Pa.

April 30, 1921.

Personally appeared before me, Immigrant Inspector Samuel Van Gilder, (Officer #4169, 41st District) who makes the following statement:

On the night of April 25th, about 10.30 P. M., I, Officer Van Gilder, with Officers Powers, Solari, Beech, McGoldrick and McCormick, raided a radical meeting at #2232 Moore Street. We rang the front door bell and were admitted entrance by a woman by the name of Josephine Baldassarre. We then entered the dining room on the first floor, and found twelve (12) men seated around the table holding a meeting. The table was covered about one foot deep with seditious literature. We then placed everybody in the house under arrest, including the woman, making thirteen (13). The literature and prisoners were taken to the 41st District Police Station in the 41st District Wagon, and on April 26th, they were given a hearing at Central Station, Magistrate McCleary presiding. He held them all under \$5,000.00 bail for Court. On the 4th month 29th the case of Toni and Josephine Baldassarre, #2232 Moore Street, was opened in Court No. 296. Their bail was reduced to \$2,500.00.

The people arrested at this time were:

Oswald Ruspi, 28 yrs. 2232 Moore St.  
Louis Bruini, 32 yrs. 1916 South 10th St.  
Joseph Balderau, 25 yrs.—No home.  
Nicholas Lasalov, 25 yrs. 2232 Moore St.  
Nicola Mareda, 34 yrs. 4119 Poplar St.  
Lista Cotina, 47 yrs. 1100 Federal Street.  
Brazma Abato, 34 yrs. 1171 South 11th St.  
Lewis De Phillipi, 27 yrs. 1171 South 11th St.  
Ralph Walda, 37 yrs. 1171 South 11th St.  
Joseph Branarash, 34 yrs. 1519 Dickinson St.  
Toby Baldasan, 23 yrs. 2232 Moore St.  
Josephine Baldasan, 21 yrs. 2232 Moore St.  
Lawrence Biguillo, 33 yrs. 2232 Moore St.  
Mrs. Oswald Ruspi, 21 yrs. 2232 Moore St.

[fol. 40] Mrs. Oswald Ruspi on April 26th was discharged by Magistrate McCleary; no evidence.

I identify 3 bundles of seditious literature, four (4) packages in all, taken from the house. I also identify the circular entitled "May Day Revolution." (Exhibit #13, as taken there at the time of the arrest.)

Officer Van Gilder signed the stenographic notes, which were read to him, "Samuel Van Gilder, #4169, 41st Dist.

Subscribed and sworn to before me this 30th day of April, 1921. A. G. Brinkhart, Immigrant Inspector.

I certify that the above is a true and correct transcript of the shorthand notes taken by me at the time and place stated in the above matter.

Harry Y. Davis.

[File endorsement omitted.]

[fol. 41] WARRANT OF DEPORTATION—Filed July 20, 1922

M 7—166

United States of America

Department of Labor

Washington

No. 55009/86.

Commissioner of Immigration, Ellis Island, N. Y. H., or to any Officer or Employee of the U. S. Immigration Service:

\* Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector A. G. Benkhart, held at Phila., Pa., I have become satisfied that the alien Catoni Tisi or Lista Cotina, who landed at the Port of New York, N. Y. on or about the 15th day of August, 1908, has been found in the United States — Act of October 16, 1910, as amended by the Act of June 5, 1920, \* \* \* in violation of the immigration act of February 5, 1917, to wit:

That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law;

and may be deported in accordance therewith:

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy, the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1922." You are directed to purchase transportation for the alien from New York, N. Y., to his home in Italy, at the lowest available rate, payable from the above named ap-[fol. 42] propriation. Execution of the warrant will serve to cancel the bond in the case.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 23rd day of September, 1921.  
 (Signed) E. J. Henning, Assistant Secretary of Labor.  
 (Seal.) JGW. JMC.

[File endorsement omitted.]

[fol. 43] DIRECTION FOR DELIVERY OF ALIEN FOR DEPORTATION

M 7—166

U. S. Department of Labor  
 Bureau of Immigration  
 Washington

In answering refer to No. 55009/86.

September 23, 1921.

Commissioner of Immigration,  
 Philadelphia, Pa.

SIR:

The Bureau acknowledges the receipt of your letter of (no date) No. 4088/19, transmitting record of hearing accorded the alien Catoni Tisi, or Lista Cotina, who landed at the port of New York, N. Y. on or about August 15, 1908.

After a careful examination of the evidence submitted in this case, the Department is of opinion that the alien is in the United States in violation of law. You are therefore directed to cause him to be taken into custody and conveyed to New York, N. Y., for deportation, the expenses incident to such conveyance, including the employment of an attendant to assist in delivery, if necessary, at a nominal compensation of \$1.00 and expenses both ways, being authorized, payable from the appropriation "Expenses of Regulating Immigration, 1922."

Conveyance of alien to New York, N. Y., should be deferred until such time as the necessary arrangements have been made by the Ellis Island Office for his return and sailing dates furnished you by that office.

[fol. 44] Respectfully, (Signed) F. H. Larned, Special Assistant.  
 JMC. Inclose W. D. No. 4295.

Approved: E. J. Henning, Assistant Secretary, for the Commissioner General. JGW.

[File endorsement omitted.]

[fol. 45] At a Special Term of the United States District Court for the Southern District of New York Held in the United States Court and Post Office Building, Borough of Manhattan, City of New York, on the First Day of August, 1922.

ORDER DISMISSING WRIT OF HABEAS CORPUS—Filed Aug. 1, 1922

Present: Hon. Augustus N. Hand, United States District Judge.

M 7—166

[Title omitted]

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this court on the 20th day of July, 1922, and the respondent having filed a return to said petition and writ and the relator having filed a traverse to the return and the application having duly come on to be heard before this court, and after hearing Messrs. Hale, Nelles & Shorr, attorneys for the relator, by Walter Nelles, and Isaac Shorr, Esqs., of counsel, in support thereof, and James C. Thomas, Jr., Esq., Assistant United States Attorney, in opposition thereof, it is

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the United States Commissioner of Immigration at the Port of New York.

[fol. 46] And it is further ordered that the relator, Catoni Tisi, be discharged into his own custody upon furnishing a bond for his appearance in the sum of Five Hundred to be approved by the court and by filing a petition for appeal, assignment of errors, order allowing the appeal, and citation within ten days from the entry hereof pending the determination of the appeal herein to the United States Supreme Court;

And it is further ordered that upon perfecting the appeal as hereinbefore provided, all proceedings on the part of the Commissioner of Immigration at the Port of New York be and the same hereby are stayed, and that the Commissioner of Immigration at the Port of New York be and hereby is stayed from deporting the said Catoni Tisi until further order of this court.

Augustus N. Hand, United States District Judge.

Service of a copy of the within is hereby admitted this 29th day of July, 1922.

William Hayward, U. S. Attorney, Attorney for Respondent.

[File endorsement omitted.]

[fol. 47] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL—Filed Aug. 4, 1922

M 7—166

Upon reading the petition for appeal herein and on consideration of the assignment of errors presented therewith, it is

Ordered, that the appeal prayed for be and it hereby is allowed and that a certified transcript of the record and proceedings herein be transmitted to the Supreme Court of the United States;

Augustus N. Hand, United States District Judge.

[File endorsement omitted.]

[fol. 48] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

PETITION FOR APPEAL—Filed Aug. 4, 1922

M 7—166

To the honorable the judges of the United States District Court for the Southern District of New York:

Now come the relator, Catoni Tisi, by Hale, Nelles & Shorr, his attorneys, and respectfully shows that an order was made and filed in this court on the 2nd day of August, 1922, dismissing the writ of habeas corpus herein and remanding him to the custody of the United States Commissioner of Immigration at the Port of New York and that in and by said order manifest error was committed, as appears from your petitioner's assignment of errors filed herein, and your petitioner appeals to the Supreme Court of the United States from said order and prays that his appeal be allowed and a citation issued in accordance with law and that a transcript of the record and proceedings upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States pursuant to the rules and provisions of law in such case made and provided.

Dated, New York, August 2, 1922.

Catoni Tisi, Petitioner. Hale, Nelles & Shorr, Attorneys for  
Petitioner, 80 East 11th Street, New York City.

[File endorsement omitted.]



[fol. 49] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

M 7—166

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 4, 1922

Now comes the relator above named and files the following assignment of errors upon which he will rely upon his prosecution of an appeal from the order of this court made herein on the 2 day of August 1922, alleging

First. That the United States District Court for the Southern District of New York erred in dismissing the writ of habeas corpus herein.

Second. That said court erred in not holding that in and by the proceedings in the Department of Labor, as shown by the record herein, the relator was deprived of life, liberty and property without due process of law contrary to Article 5 of Amendments to the Constitution of the United States.

Third. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 4 of Amendments to the Constitution of the United States providing that the right of the people to be secure in their [fol. 50] persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Fourth. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 5 of Amendments to the Constitution of the United States providing that no person shall be deprived of life, liberty or property without due process of law.

Fifth. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 13 of Amendments to the Constitution of the United States providing that neither slavery nor involuntary servitude except as a punishment of crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Sixth. That said court erred in holding that there was evidence in the record to sustain the finding of the Secretary of Labor in ordering the deportation of the relator.

Seventh. That said court erred in not holding that the order of deportation of the relator was not based on any evidence.

Eighth. That said court erred in not holding that there was no evidence to sustain a finding that the relator violated the Act of October 16, 1918, as amended by the Act of June 5, 1920.

Ninth. That said court erred in not holding that there was no evidence to support a finding that the relator violated Subdivisions D and E of the Act.

[fol. 51] Wherefore, the relator prays that said order be reversed and that such other and further orders, directions and decrees be made as shall be in accordance with law.

Dated, New York, August 2, 1922.

Respectfully submitted, Catoni Tisi, Relator. Hale, Nelles & Shorr, Attorneys for Relator, 80 East 11th Street, New York City.

[File endorsement omitted.]

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[fol. 52] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

ORDER ENLARGING TIME—Filed Sept. 20, 1922

Upon the annexed stipulation and the annexed affidavit of Isaac Shorr, verified the 19th day of September, 1922, it is

Ordered, that the time of the relator herein as appellant to docket the case and file the record thereof with the Clerk of the United States Supreme Court, be and it hereby is enlarged to and including the 6th day of October, 1922.

Dated, New York, September 20th, 1922.

C. M. Hough, Judge of the United States Circuit Court.

[File endorsement omitted.]

[fol. 53] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated New York, September 30, 1922.

William Hayward, U. S. Attorney, Attorney for Respondent-appellant. Hale, Nelles and Shorr, Attorneys for Appellant. O. K. J. C. T., Jr.

[fols. 54 & 55] CITATION AND SERVICE—Filed Aug. 10, 1922

By the Honorable Augustus N. Hand, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to Robert E. Tod, Commissioner of Immigration at the Port of New York, and William Hayward, Esq., United States Attorney for the Southern District of New York, and Harry M. Daugherty, Attorney General of the United States, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Supreme Court in Washington, D. C., on the 2d day of September, 1922, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Catoni Tisi the relator, is appellant, and Robert E. Tod, Commissioner of Immigration at the Port of New York, is appellee, to show cause, if any there be, why the order appealed from should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 3d day of August, in the year of our Lord one thousand Nine hundred and twenty-two; and of the Independence of the United States the One Hundred and forty-seventh.

Augustus N. Hand, United States District Judge.

[fol. 56] [File endorsement omitted.]

Service of a copy of the within is hereby admitted this 10 day of August, 1922.

William Hayward, R. C., U. S. Attorney, Attorney for Relator.

[File endorsement omitted.]

[fols. 57 & 58] UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 4th day of October, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-seventh.

Alex Gilchrist, Jr., Clerk. (Seal of District Court of the United States, Southern District of N. Y.)

[File endorsement omitted.]

Endorsed on cover: File No. 29,190. S. New York D. C. U. S. Term No. 132. The United States of America ex rel. Catoni Tisi, alias Lista Cortina, appellant, vs. Robert E. Tod, Commissioner of Immigration at the Port of New York. Filed October 6th, 1922. File No. 29,190.

(9764)

To be argued by  
WALTER NELLES.

# Supreme Court of the United States

OCTOBER TERM, 1923.

No. 132.

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UNITED STATES OF AMERICA ex  
rel. CATONI TISI,  
Appellant,  
against

ROBERT E. TOD, Commissioner of  
Immigration at the Port of  
New York,  
Respondent.

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## BRIEF FOR APPELLANT.

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### Statement of Facts.

This is a direct appeal to this Court from an order of the Honorable Augustus N. Hand, D. J., in the United States District Court for the Southern District of New York, dismissing a writ of habeas corpus (Record, p. 31). The question—that of a

finding unsupported by evidence—is under the Fifth Amendment to the Constitution of the United States.

On September 23, 1921, the Assistant Secretary of Labor issued a warrant for Tisi's deportation upon the ground that he has been found in the United States in violation of the Immigration Act of February 5, 1917, as amended by the Act of June 5, 1920, to wit:

*"That he [writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published or displayed, or] KNOWINGLY had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law"* (Record, p. 29).

This warrant, like the statute, specifies a number of alternative grounds for deportation. It is apparent from the record that the inclusion of the alternative grounds which we have bracketed and italicized in the foregoing quotation was wanton surplusage. This, we believe, is clear beyond necessity of discussion. We shall accordingly ignore the bracketed matter, treating the warrant as if it recited only that Tisi KNOWINGLY had in his possession proscribed literature for the purpose of circulation, etc.

The warrant was based upon a hearing before an immigration inspector at Philadelphia in August, 1921, at which Tisi and four Philadelphia police officers testified (Record, pp. 11-24). There was testimony of a loose, artificial and inconclusive

character that Tisi, among a dozen others, was seen folding proscribed literature. The literature was in English. Tisi was entirely ignorant of the English language and of the character of the literature.

It appears from the record that Tisi is an Italian shoemaker, forty-nine years old, resident in the United States since 1904, with a wife and two children. He cannot read or understand English. On April 25, 1921, Tisi called at Giuseppe Baldassare's house at 2232 Moore Street, Philadelphia, to collect a debt from Baldassare, and stayed awhile to chat and drink wine. There were about a dozen men in the room. They were grouped about a table upon which were piles of printed leaflets. The piles included copies of leaflets entitled "May Day of Revolution" and "May Day. Red Labor Day." These two leaflets were in evidence at the hearing and were of the proscribed character. The piles also included a great deal of other printed matter, some in English and some in Italian. None of this was in evidence at the hearing and it is to be presumed that none of it was of the proscribed character. Tisi had no information as to the nature or contents of any of the literature. Four police officers entered and arrested all the men and seized all the literature.

The material testimony of Tisi and each of the police officers will here be set out in detail.

Tisi, through an Italian interpreter, testified as follows:

"Q. Was there a meeting going on at the time you were arrested? A. I don't know, because as soon as I entered there they gave me a drink and we were discussing daily occurrences. \* \* \*

Q. Do you know what was on the table at the time you were in the room with those other people you mention? A. There were a lot of papers on a table but I don't know what they were, because I cannot read English.

Q. Were all those papers in English or Italian? A. They appeared to me as if they were in English, but I did not pay much attention to it.

Q. Are you a member of the United States Communist Party of America? A. No.

Q. Will you explain to me what you were doing at the time you were in that room with Joseph or Giuseppe Baldassare and others who were arrested? A. Baldassare owed me money, and I went there that night to collect this money. While I was there I received \$25.00 on account of what Baldassare owed me, then they offered me a drink and I was there holding a conversation with them about the daily happenings and I was about to go when the Officers came in and arrested me.

Q. You were arrested along with the others that were assembled in that room at the time; weren't you? A. Yes, sir.

Q. Do you believe in the principles of the Communist Party of America? A. No.

\* \* \* \* \*

Q. Did many of those persons drink wine that evening there? A. They were all drinking.

Q. As far as you are concerned, you made a business visit to that house that night? A. That is all; just for business.

Q. Can you read English? A. No.

Q. Did you know or understand any leaflets or stickers that were on the table at that time? A. No; I did not know.

Q. Did you see the leaflet I am showing you now on the table there that night (ex-



hibiting circulars 'May Day of Revolution' and 'May Day. Red Labor Day')? A. I don't know, because they were all piled up.

Q. Did you see the stickers there entitled 'Hail May Day' and 'Unemployed Mobilize' (exhibiting same to witness)? A. I don't know. I did not observe them.

Q. Did any of those persons tell you anything about this literature, leaflets, and stickers on the table? A. No. We didn't talk about those leaflets or stickers at all. We just spoke of business" (Record, pp. 12-14)

This testimony was in nowise impugned or contradicted.

In affidavits five days after the arrest (Record, pp. 27-28) furnished to satisfy the requirement of "probable cause" for the issuance of departmental warrants of arrest, the police officers swore simply that they had seized twelve men about a table covered with "seditious literature," which included a copy of "May Day of Revolution." They did not attempt to make out that they had observed any of the arrested persons performing any act with relation to literature of the proscribed character. At the hearing two months later, however, helped by the inspector's leading questions, they strengthened this testimony. It appeared that their primary concern was to keep covered men whom a glance at the literature had convinced them were "pretty desperate characters," and that they did not look especially at any particular man. They insisted, notwithstanding, that they had been able to observe that every one of the men was engaged in folding either "May Day of Revolution" or "May Day, Red Labor Day," rather than any of the innocent circulars. Officer Van Gilder testified:

"When we got in the dining room there were about ten or eleven men sitting around the table, which appeared to be a meeting there, and they were all folding circulars marked 'May Day of Revolution' and 'May Day, Red Labor Day.' There was quite a good deal of other stickers and papers and literature piled on the table; and we then placed them all under arrest.

Q. Did you observe particularly this alien before you in the act of folding these circulars? A. He and the rest of them were all folding circulars.

Q. All were folding circulars? A. Yes, sir. \* \* \*

Q. What kind of paper was Tisi folding at the time? A. He had both 'May Day of Revolution' and 'May Day, Red Labor Day' in front of him. \* \* \*

Q. How many other men were folding 'May Day of Revolution' leaflets? A. I said they were all folding them circulars. I didn't know which ones were folding 'May Day of Revolution' or which 'May Day, Red Labor Day.' \* \* \*

Q. Now, officer, the circulars you refer to were they entitled 'May Day, Red Labor Day' and 'May Day of Revolution'? A. They were; some of them.

Inspector: I will introduce as evidence and make same a part of this record, marked 'Exhibit S1' and 'Exhibit S2,' circulars entitled 'May Day of Revolution' and 'May Day, Red Labor Day' " (Record, pp. 14-17).

Officer McCormack said:

"A. Why, we went there to raid the house at 2232 Moore Street. He was one around the table folding literature at the house there when we entered.

Q. Did you see him folding the literature?  
 A. Why, his hands were on the table and the literature all around the table there and every one of them folding. \* \* \*

Q. And was the literature this alien before you was folding this which I show you here, 'Exhibits S1' and '2'? A. Yes, sir.

Q. Was there other literature on the table? A. Yes; it was stickers and papers.  
 \* \* \* Why, when we came in they were all folding. I didn't look at no particular man; walked in and didn't look at any particular man. \* \* \*

Q. Now, you would not say positively, under oath, when you came in Tisi was actually folding literature of the kind that is spoken of here? A. Oh, yes; because there were bundles there and you could see them.

Q. You say you did not pay any particular attention to any man? A. Sure not" (Record, pp. 17-19).

Officer McGoldrick said:

"We were sent there to make a raid on these Bolsheviks, as they were called, and as we entered the house this man, with about ten other men, was sitting around the table, and as we entered the door they had literature like this in front of them (indicating Exhibits S1 and S2) and they had them like this (indicating), and as we entered each man dropped his hands. I walks around to the table and picks up pieces of literature and seen what it was. \* \* \* It just took about a second or so for every officer to be in the room covering the men, because under reading of some of the literature it looked as if they were pretty desperate characters, and we didn't lose much time to find out what was going on. \* \* \*

Q. Now, officer, you are willing to positively swear that this alien before you, when you entered the room, was in the act of folding these circulars, Exhibits S1 and S2, that are shown you here? A. Yes, sir" (Record, pp. 19-21).

Officer Powers said :

"So we went up to the house, and on entering seen eleven men sitting around the table folding literature; so we told them all to put their hands on the table, to keep their hand on the table, and went through them to see that they didn't have any guns or anything. I didn't know the officer now, but one 'phoned for the wagon, and we took them all, took literature and all.

Q. Now, what was this particular person here, Mr. Tisi, doing at the time you entered the room? A. The time I entered the room, he was folding circulars.

Q. Did you see him folding circulars? A. Yes; I did.

Q. Were the circulars like this I show you here, marked Exhibits S1 and S2? A. Yes, sir.

Q. Were all these sitting around the table engaged the same way? A. They were, except one man, who was writing in a book" (Record, p. 22).

It is believed that the foregoing comprises the entire evidence so far as material. No particular piece of paper was introduced as specifically handled by Tisi. Nothing was introduced to show that he knew the nature of any of the literature. He is an Italian. He was examined through an interpreter. There was no faintest suggestion that he could read the English circulars. And it can-

not be inferred without evidence that the other men in the room, engaged in acts for which under the laws of Pennsylvania they were liable to criminal punishment, disclosed to Tisi the character of the circulars.

### **Specification of Error.**

The District Court erred in not holding that there was no evidence whatever tending to support the finding that Tisi **KNOWINGLY** possessed literature of the proscribed character (see Assignment of Errors, p. 33).

### **Argument.**

**There was no evidence whatever of any knowledge on Tisi's part of the nature and contents of any of the literature.**

The discretion of the Secretary of Labor, within the statutory limits allotted to it, is, of course, not subject to review. His finding upon conflicting evidence, or, as in this case, upon weak, artificial and inconclusive evidence, that an alien possessed proscribed literature, might stand, even though contrary to fact.

But when he purports to make a finding of **KNOWING** possession without any evidence, he arbitrarily usurps a power not entrusted to him and violates the principles of due process of law.

*American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, 108, 109.  
*Lewis v. Frick*, 233 U. S. 291, 297.

Even though the Secretary of Labor believed the testimony of the police officers upon the point of Tisi's folding of proscribed literature, he would have no basis for imputing to Tisi knowledge of its proscribed character. The word "knowingly" in such a statute imports that there must be proof not only that the alien was conscious of his physical possession of the literature but also that he was conscious of its character.

*Price v. United States*, 165 U. S. 311.

*Rosen v. United States*, 161 U. S. 29.

*Spurr v. United States*, 174 U. S. 728.

*Potter v. United States*, 155 U. S. 438, 446.

*Felton v. United States*, 96 U. S. 699, 702.

*Pettibone v. United States*, 148 U. S. 197.

The evidence that Tisi could not read English and was ignorant of the character of all the leaflets, whether proscribed or innocent, on Baldassare's table, was positive and uncontradicted. He went to Baldassare's house to collect a debt and stayed to talk and to drink wine. There is no intimation in the record of any doubt or suspicion of the veracity of these statements. But even if the Secretary of Labor indulged an incredulity which there was nothing in the record to warrant, he would be left without a shadow of ground for a contrary affirmative finding. The police officers' testimony that Tisi folded leaflets, if true, entirely fails to establish that he had any knowledge of their contents. Slight evidence would doubtless serve to raise an inference that a man found folding literature was aware of its character. But where, as here, the circumstances are entirely consistent with his ignorance of its character, there can be no contrary inference.

In a similar case of a non-English speaking alien (*U. S. ex rel. Kasparian v. Hughes*, 278 Fed. Rep. 262), Judge Thompson in the United States District Court for the Eastern District of Pennsylvania sustained a writ of habeas corpus, saying, at page 265:

"That statutes creating an offense 'knowingly' committed import knowledge as to all the essential ingredients of the offense, is an undoubted and well-recognized rule of construction and a reasonable one. If the mere distribution without further knowledge were sufficient, the word 'knowingly' would be superfluous, as one could not well distribute circulars without knowledge that he was distributing them. \* \* \*

In order to have ground for deportation, it was necessary that the Department of Labor should be satisfied, not only that the relator distributed these seditious circulars, but that he knew the contents to be of a seditious character. If it had been shown that the relator could at the time of his arrest read the English language, there would have been evidence on which to base a conclusion that he knowingly committed the act charged. Any evidence, however slight, would have been sufficient. The only evidence upon the subject was derived from the statement of the alien himself. The Secretary of Labor was at liberty to disbelieve the testimony of the respondent. But that would leave the case with the mere naked fact of distribution together with the additional fact that the relator was an Armenian, whose statement it was necessary to take through a Turkish interpreter. \* \* \*

This is not a case in which the court is passing upon the cogency of the evidence in determining whether the evidence upon the

subject of knowledge would have moved this court to the conclusion at which the Department arrived. The record shows there was concededly no evidence that the relator knowingly committed the acts charged, and that the conclusion of the Department was based upon an erroneous construction of the statute."

In the case at bar the utmost which the record can be claimed to show is this: an innocent and natural participation by an Italian in a manual task of folding English papers—a task which the circulation of wine was calculated to make attractive. The imputation to him of knowledge of the character of the papers is wholly arbitrary.

**The order appealed from should be reversed and the writ of habeas corpus sustained.**

Dated, October 15, 1923.

Respectfully submitted,

WALTER NELLES,  
ISAAC SHORR,

Attorneys and Counsel  
for Appellant,  
80 East 11th Street,  
New York City.



No. 640 132

FILED

JUN 4 1923

WM. R. STANSBURY  
CLERK

SUPREME COURT OF THE UNITED STATES.

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UNITED STATES OF AMERICA EX REL. CATONI TISI,  
ALIAS LISTA CORTINA, RELATOR,

*against*

ROBERT E. TOD, COMMISSIONER OF IMMIGRATION AT THE  
PORT OF NEW YORK, RESPONDENT.

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STATE OF NEW YORK,

*County of New York, ss:*

FANNIE SIEGARTEL, being duly sworn, says that she is over eighteen years of age and is in the employ of Walter Nelles and Isaac Shorr, the attorneys for the relator herein; that on the 1st day of June, 1923, at five o'clock p. m., she served the annexed affidavit and notice of motion upon Harry M. Daugherty, Attorney General of the United States, by depositing a true copy thereof in the United States mail at the branch post-office known as Station "D," Borough of Manhattan, City of New York, the same being one of the regular branch post-offices of the New York City General Post-Office, enclosed in a securely closed wrapper, with the postage thereon prepaid, addressed to said Attorney General at his office in Washington, D. C.

FANNIE SIEGARTEL.

Sworn to before me this 2nd day of June, 1923.

[Seal of Carol Weiss King, Notary Public, New  
York County.]

CAROL WEISS KING,  
*Notary Public, New York Co. Clerk's No. 310.*

New York Co. Register's No. 4203.

Commission expires March 30, 1924.

## SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA *ex Rel.* CATONI TISI, *alias* LISTA  
CORTINA, *Relator*,

*against*

ROBERT E. TOD, *Commissioner of Immigration at the Port  
of New York, Respondent.*

SIRS:

Please take notice that upon the annexed affidavit of Isaac Shorr, one of the attorneys for the relator, duly verified the first day of June, 1923, the undersigned will move this court on Monday, the 4th day of June, 1923, at the opening of the court, or as soon thereafter as counsel can be heard, for an order rescinding the order dismissing this case on the 19th day of February, 1923, for failure to comply with the 10th rule of the General Rules of the United States Supreme Court, and for such other and further relief as to the court may seem just and proper.

WALTER NELLES,  
ISAAC SHORR,  
*Attorneys for Relator.*

Office and P. O. address, 80 East 11th street, Borough of Manhattan, City of New York.

To Harry M. Daugherty, Attorney General, Washington, D. C.; William Hayward, United States Attorney for the Southern District of New York.

## SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA *ex Rel.* CATONI TISI, *alias*  
LISTA CORTINA, *Relator*,

*against*

ROBERT E. TOD, *Commissioner of Immigration at the Port of*  
*New York, Respondent.*

UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

ISAAC SHORR, being duly sworn, says that he is one of the attorneys for the relator; that it is the earnest desire of the relator, as well as his counsel, to prosecute this appeal; that it was extremely difficult for the relator to obtain the necessary money to print the record on appeal, but that he has now obtained the money and tenders it to the Clerk for the printing. While he was informed that he would have to put up the money for printing the case, he was not informed by his counsel that he would have to do that within ninety days, due to an oversight on the part of his counsel. I therefore ask that an order be made rescinding the order of the 19th day of February, 1923, dismissing the appeal with costs on condition that the amount of money necessary for the printing be immediately paid to the Clerk.

ISAAC SHORR.

Sworn to before me this 1st day of June, 1923.

JOSEPH R. BRODSKY,  
*Notary Public, New York County.*

New York Co. Clerk's No. 732, Register's No. 4045A.

Kings County Clerk's No.—, Register's No. 43—.

Bronx County Clerk's No. 53, Register's No. 320.

Term expires March 30, 1924.

[Endorsed:] United States Supreme Court. United States of America *ex Rel.* Catoni Tisi, *alias* Lista Cortina, relator, against Robert E. Tod, Commissioner of Immigration at the Port of New York, respondent. Affidavit and notice of motion. Walter Nelles, Isaac Shorr, Attorneys for relator, 80 East 11th Street, New York City.

[Endorsed:] File No. 29190. Supreme Court U. S., October term, 1922. Term No. 640. The United States *ex Rel.* Catoni Tisi, etc., appellant, *vs.* Robert E. Tod, Commissioner, etc. Motion and affidavit to reinstate case to the docket, with affidavit of service. Filed June 4, 1923.

No. 102

# Joint Supreme Court of the United States

October Term, 1903

THE UNITED STATES OF AMERICA vs. THE CLAYTON  
AND ALCOCK LIME COMPANY, APPELLANTS.

ROBERT E. TOLSON, COMMISSIONER OF IMMIGRATION AND  
NATURALIZATION, NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA, NEW YORK.

WRIT FOR THE REPLEVIN

THE UNITED STATES OF AMERICA vs. THE CLAYTON  
AND ALCOCK LIME COMPANY, APPELLANTS.

# In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA EX REL. Catoni Tisi, alias Lista Cortina, appel- lant,	}	No. 132.
v.		
ROBERT E. TOD, COMMISSIONER OF IM- migration at the port of New York.	}	

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

## BRIEF FOR THE RESPONDENT.

### STATEMENT.

This case comes before the Court by direct appeal from an order of the District Court of the United States for the Southern District of New York, which dismissed a writ of habeas corpus and remanded the relator to the custody of the United States Commissioner of Immigration at the Port of New York for deportation under a warrant duly issued by the Secretary of Labor. The warrant had been issued under the authority of the Act of Congress of October 16, 1918, ch. 186, sections 1 and 2, 40 Stat. 1012, the first section of which was amended June 5, 1920, ch. 251, 41 Stat. 1008.

Section 1 of this Act provides:

That the following aliens shall be excluded from admission into the United States:

\* \* \* \*

(d) Aliens who \* \* \* knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) The overthrow by force or violence of the Government of the United States or of all forms of law, \* \* \*.

Section 2 is as follows:

That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States.

Section 19 of the Act of February 5, 1917, ch. 29, 39 Stat. 889-890, concludes with this provision:

In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.



Catoni Tisi, the relator and appellant, is an alien who was born in Sigillo, Province of Perugia, Italy, and came to the United States in 1904. (R. 1, 11.)

On April 25, 1921, at about 10.30 p. m., he and ten others were seated around a table at 2232 Moore Street, Philadelphia, Pennsylvania, engaged in folding circulars. (R. 15-24, 27-28.) One of these circulars is printed in the record at pages 25-26 and contains the following statements (R. 26):

The United States Government stands for the bosses against the workers; it uses the law-making bodies, the courts, and its troops against the workers.

Then we must destroy the United States Government.

We must overthrow it and put it in its place a workers' government. We must uphold the workers' government with a strong army to crush the bosses and all who support them.

We must prepare for the revolution; there is no other way.

While the appellant and his companions were thus engaged, six officers of the Philadelphia police force entered the room. For a minute or two the intrusion was not noticed by those seated at the table, who continued to fold circulars. (R. 15, 23.) The officers then arrested the entire group, took them to the Central Police Station, where they were given a hearing the following day and held under \$5,000 bail for trial in the State courts. (R. 28.)

On April 30, 1921, three of the police officers made affidavits, which are printed on pages 27-28 of the record, and which contained inter alia the following statement:

We then entered the dining room on the first floor and found twelve (12) men seated around the table holding a meeting. The table was covered about one foot deep with seditious literature. (R. 28.)

These affidavits were attached to an application to the Secretary of Labor for a warrant of arrest. (R. 9.) The warrant was issued July 28 (R. 2, 5, 10), and the alien was given a hearing before an Immigration Inspector on August 8, 1921. (R. 11.) At the hearing four of the police officers who assisted in making the arrests, and the appellant himself, testified. Each of the officers stated clearly and positively that when they entered the room there were large bundles of circulars lying upon the table and that the appellant with the other men was seated at the table actively engaged in folding the circulars to a convenient size for distribution. (R. 15-24.) Some of the circulars were printed in the English and some in the Italian language. The former, which were introduced in evidence, were of the character proscribed by the Act of Congress. The character of the latter does not appear from the record.

The appellant testified that he had gone to 2232 Moore Street about 9.30 p. m. for the purpose of collecting a debt from Baldassare, one of the men

there gathered. When he entered they gave him a drink of wine, and he remained and chatted with them. He was not sure whether he sat down at any time during the hour that he remained in the house but was sure that he was standing up ready to go when the officers came in. He admitted that there were a lot of circulars piled up on the table, but said that he did not know what they were, for he could not read English, and paid little attention to them. (R. 11-14.)

The record of the hearing was forwarded to the Secretary of Labor, who found as a fact that Catoni Tisi "knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States." On September 23, 1921, the Secretary issued his warrant of deportation. (R. 29-30.) At the request of the appellant and his counsel, the case was several times reviewed by the Secretary of Labor, but on June 10, 1922, further reconsideration was refused and thereupon a petition for writ of habeas corpus was filed. (R. 6-7.) After a hearing before the District Court an order was made on August 1, 1922, dismissing the writ, from which order this appeal has been taken. (R. 31.)

It is urged by the appellant that the order of deportation deprives him of liberty without due process of law, in violation of the Fifth Amendment to the

Constitution of the United States, because there was no evidence before the Secretary of Labor upon which such order might be based.

#### ARGUMENT.

*The findings of the Secretary of Labor and the order of deportation made thereon were based upon evidence contained in the record before him. They can not be reversed or set aside by the courts.*

Congress has committed to the Secretary of Labor and the tribunals established by the regulations of his Department, power to hear and determine all questions relating to the admission of immigrants and the deportation of undesirable aliens. The jurisdiction of these tribunals, within their province, is exclusive and final. No appeal therefrom lies to the courts. In such cases the courts upon habeas corpus have undertaken to examine the proceedings upon which an order of deportation is based only for the purpose of determining whether a fair hearing was afforded or whether the immigration officers acted arbitrarily or abused the discretion vested in them. "Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all." (*Chin Yow v. United States*, 208 U. S. 8, 11.) "Whether in a given case the evidence warrants an order of deportation is a matter as to which the responsibility rests entirely with the Immigration tribunals. Their findings in that respect can not be reviewed or set aside by

Courts of Law, unless so entirely unsupported by evidence as to be not merely wrong but unreasonable, and to constitute an abuse of discretion and a denial of due process of law." (*Ex parte Petkos*, 212 Fed. 275, 276-277.)

*Low Wah Suey v. Backus*, 225 U. S. 460.

*Zakonaite v. Wolf*, 226 U. S. 272.

*Lewis v. Frick*, 233 U. S. 291.

In the instant case it is conceded that the evidence was sufficient to sustain a finding that the appellant had in his possession, for the purpose of distribution, printed matter which advocated the overthrow by force or violence of the Government of the United States, but it is said that there is no evidence that he had it in his possession *knowingly*.

In examining the record it must be remembered that, in the very nature of things, such evidence will not be direct, excepting in rare cases where the alien has confessed knowledge. Knowledge, like intent, is a mental state, and in most cases must be proved by circumstantial evidence.

In criminal cases, to which we naturally turn for authority, it is well settled that the jury in arriving at its verdict is not confined to a consideration of the palpable facts in evidence, but may draw all reasonable inferences therefrom.

*United States v. Wilson*, 176 Fed. 806, 810.

*United States v. Greene*, 220 Fed. 973.

Where the knowledge with which an act is done constitutes an element of a criminal offense, the

prosecution is required to show only the defendant's ability and opportunity to know.

*Rivers v. State*, 118 Ga. 42, 44 S. E. 859.

*Wuertemberg v. State* (Texas Cr. App.), 51 S. W. 944.

Knowledge may be inferred from circumstances, such as an apparently intentional neglect to make inquiry before engaging in a doubtful transaction. In *Bonker v. People*, 37 Mich. 4, 9, Mr. Chief Justice Cooley said:

No doubt where guilty knowledge is an ingredient in the offense, the knowledge must be found; but actual, positive knowledge is not usually required. In many cases to require this would be to nullify the penal laws.

In the case at bar the evidence shows that the appellant, for a period of about an hour, was in a room with a number of other men with whom he was conversing on terms of familiarity. At the end of that time he was found with the others seated at a table engaged in folding seditious literature. He thus had an opportunity by inquiring to learn the character of the literature and the purposes of the men engaged in handling it. These facts are sufficient to sustain the inference that he knew its character and the purpose for which it was intended.

It is true that he testified that he could not read English and did not know what the circulars were. But the Secretary of Labor was not bound to believe this testimony. In fact, he would have been justi-

fied in rejecting it entirely as unworthy of belief. The appellant had testified that when the officers entered the house he was standing up ready to go. This was flatly contradicted by all four of the officers. If they be believed, the testimony of the appellant was false upon this point and it would not be unfair to reject his testimony on other material matters. Furthermore, it is inherently improbable that this appellant would join a group of men of this kind about a table piled full of printed matter and engage in preparing it for distribution without inquiring and obtaining knowledge of its character.

The case is quite different from that of *United States ex rel. Kasparian v. Hughes*, 278 Fed. 262, which is relied upon by counsel for the appellant. In that case it appeared that the alien, who could not read the language in which certain seditious circulars were written, was employed and paid \$3 for distributing them. Before engaging in the employment he inquired as to their character and was told that they were grocery advertisements. (Page 263.) The record before us presents no such case.

If the testimony of the appellant be true and that of the police officers be false, this is an unfortunate case; but, there being evidence of facts from which the inference of knowledge naturally and logically follows, the courts are without jurisdiction to discharge him on habeas corpus.

**CONCLUSION.**

It is respectfully submitted that the order of the District Court should be affirmed.

JAMES M. BECK,

*Solicitor General.*

GEORGE ROSS HULL,

*Special Assistant to the Attorney General.*

OCTOBER, 1923.





# Supreme Court of the United States

OCTOBER TERM, 1923.

No. 132.

UNITED STATES OF AMERICA ex rel.

CATONI TISI,

Appellant,

against

ROBERT E. TOD, Commissioner of  
Immigration at the Port of  
New York,

Respondent.

## REPLY BRIEF FOR APPELLANT.

The respondent's brief points to no scrap of evidence in the record which would support an inference that Tisi had knowledge of the seditious character of any of the literature seized at Baldassarre's house.

We agree that knowledge must generally be proven, if at all, by circumstantial evidence. But when circumstances are as consistent with one thing as with another—as consistent with ignorance as with knowledge—they are not evidence of either. Such circumstances are not circumstantial evidence. They are simply ambiguous circumstances.

Upon a showing of ambiguous circumstances the scale stands delicately balanced. A light weight will turn it. The somewhat general human propensity to believe the worst is not such a weight. Unless a real weight, however light, does in fact turn the scale, the circumstances remain simply ambiguous and do not become evidential.

A man who finds himself in ambiguous circumstances will naturally explain. But where, as here, the circumstances are as open to an innocent as to a guilty interpretation, it may be doubted whether his omission to explain would alone be sufficient to raise inference against him. Tisd, however, explained and his explanation was entirely credible and reasonable. He went to Baldassarre's house to collect a debt. Since there was wine and company, he stayed for awhile to discuss his business and what the interpreter called "daily occurrences" (p. 12). He could not read the English circulars and naturally no one informed him that they were seditious. As he was a mere by-stander, not a participant in folding circulars, it would have been none of his business to inquire about them.

The fact that his explanation was in one particular contradicted by the police witnesses in no wise supplies the want of some affirmative indication that he had knowledge of the nature of the circulars. His explanation was so entirely credible, and the contradiction so incredible, that it is difficult to assume, even for the sake of argument, that the contradiction can affect the construction of the record. When he said that he was standing and on the point of taking his leave at the moment of police entrance, he could not have known that the police witnesses would swear that he was seated at the table folding circulars. If in fact he had been

seated in the presence of four witnesses who were to follow him, and if he was engaged in deliberate perjury for self-exculpation,\* he would have worked out an explanation consistent with his being seated.

But even if the testimony of the policemen controls the construction of the record, that testimony goes only to a collateral point. The situation is unlike that in *Lewis v. Frick*, 233 U. S. 291, 299, where rejection of the alien's explanation left no alternative to the finding of his guilt. The Secretary of Labor might disbelieve Tisi and believe the testimony of the police witnesses that he was found in the act of folding circulars, and there would still be no evidence that he knew the nature of the circulars. It would have been entirely natural for Tisi, a temporary participant in a convivial gathering, to join in any manual occupation in which the rest of the company were engaged. Knowing no English, he could not have ascertained for himself that the circulars were seditious. Those who knew it would have been careful not to tell him. The testimony of the police witnesses, therefore, taken at its maximum face value, leaves the ambiguous circumstances as consistent with Tisi's ignorance of the character of the selected circulars as with knowledge.

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\* If there was flagrant perjury in the record, it was by the police witnesses. They variously estimated their period of observation at one second (p. 20), 15 or 20 seconds (p. 103), and 20 seconds (p. 111)—not at "a minute or two" as stated on page 2 of the respondent's brief. They insisted notwithstanding that they had observed each of the eleven men in personal contact with one or the other (though not specifically with either) of two named circulars selected for exhibition from a table a foot deep with papers of diverse character.

Were it material, and the openness of the point in this Court less doubtful, it might be strongly urged that an objection upon this record to disbelieve Tisi and believe the police witnesses would be as flagrantly inconsistent with the principles of justice as to vitiate the departmental proceeding.

The respondent's brief advances the proposition that knowledge may be inferred from circumstances in which a man would naturally be upon his inquiry, provided he had ability and opportunity to know. This we do not dispute. It has, however, no application here. If Tisi's own testimony was true and he took no part in the folding of circulars, he was not upon inquiry as to their character. Inquiry would have been an impertinence.

And if the police testimony was true, and he did take part in folding circulars, it may still be questioned to what extent the circumstances, which included the circulation of wine, were calculated to put Tisi upon inquiry. Assume, however, that he would naturally have investigated. What showing was there of his ability or opportunity to learn?

He is an Italian shoemaker who had been refused naturalization on account of his ignorance of English (Record, p. 14). It is of common knowledge that Italians of this class live in communities of their own kind, acquiring from the English language, if anything at all, only the simplest phrases of salutation and barter. Irrespective of Tisi's testimony that he knew no English, there could be no affirmative inference to the contrary. He could not have learned the character of the circulars by inspection of them.

Nor can it be inferred that he could have learned their character by inquiry. The only persons of whom he could have inquired were engaged in acts of which they stood in danger of prosecution and punishment under the laws of Pennsylvania. Unless they had reason to trust him as a sympathizer, which there is no ground to suppose, they would not have imperilled themselves and their enterprise by telling him the true character of the circulars.

Assume that the Secretary of Labor might reject the testimony of Tisi and accept entirely that of the police officers. But that (paraphrasing the language of Judge Thompson in *United States ex rel. Kasparian v. Hughes*, 278 Fed. 262, p. 11 of our main brief) would leave the case with the mere negative fact of manual possession together with the additional fact that the relator was an Italian, whose statement is was necessary to take through an Italian interpreter.

**As the departmental warrant was not based upon evidence the writ of habeas corpus should have been sustained.**

Dated, November       , 1923.

Respectfully submitted,

WALTER NELLES,  
ISAAC SHORR,

Attorneys and Counsel for Appellant,  
80 East 11th Street,  
New York City.



UNITED STATES EX REL. TISI, ALIAS CORTINA,  
v. TOD, COMMISSIONER OF IMMIGRATION AT  
THE PORT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 132. Argued January 3, 1924.—Decided February 18, 1924.

1. In a proceeding to deport an alien for having in possession, for distribution, printed matter advocating the overthrow of the Government by force, knowledge on his part of the seditious character of the printed matter, though essential to the authority to deport, is not a jurisdictional fact. P. 133.

2. Mere error of the Secretary of Labor in finding a fact essential to deportation from evidence legally, but not manifestly, inadequate is not a denial of due process of law. P. 133.

Affirmed.

APPEAL from an order of the District Court dismissing a writ of *habeas corpus*.

Mr. Walter Nelles, with whom Mr. Isaac Shorr was on the briefs, for appellant.

Mr. Solicitor General Beck and Mr. George Ross Hull, Special Assistant to the Attorney General, appeared for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Tisi, an alien, was arrested in deportation proceedings as being within the United States in violation of law. The ground specified was knowingly having in his possession for the purpose of distribution printed matter which advocated the overthrow of the Government of the United States by force. Act of October 16, 1918, c. 186, §§ 1 and 2, 40 Stat. 1012, as amended June 5, 1920, c. 251, 41 Stat. 1008. The warrant of deportation issued after a hearing. Then this petition for a writ of *habeas corpus* was brought in the federal court, and heard upon the return and a traverse thereto. The order entered, without opinion, dismissed the writ, remanded the relator to the custody of the Commissioner of Immigration at the Port of New York, and granted a stay, pending the appeal to this Court. The case is here under § 238 of the Judicial Code, the claim being that Tisi was denied rights guaranteed by the Federal Constitution.

Tisi's claim to be discharged on *habeas corpus* rests wholly upon the contention that he has been denied due process of law. There was confessedly due notice of the charge and ample opportunity to be heard. What Tisi



urges is that there was no evidence to sustain the finding that he knew the seditious character of the printed matter. Such knowledge is not, like alienage, a jurisdictional fact. *Ng Fung Ho v. White*, 259 U. S. 276, 284; *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149. But it is an essential of the authority to deport. There is no suggestion that the Secretary of Labor failed to recognize this requirement. The contention is that he erred in deciding that there was substantial evidence of such knowledge and in allowing the supposed evidence to convince him of the fact. The printed matter found consisted of leaflets in the English language. Tisi testified that he cannot read English; that he did not know the character of the leaflets; and that his presence in the company of other Italians who were seen folding the leaflets was accidental. The Secretary of Labor was not obliged to believe this testimony. The Government did not introduce any direct evidence to the contrary. But there was much evidence of other facts from which Tisi's knowledge of the character of the leaflets might reasonably have been inferred. We do not discuss the evidence; because the correctness of the judgment of the lower court is not to be determined by enquiring whether the conclusion drawn by the Secretary of Labor from the evidence was correct or by deciding whether the evidence was such that, if introduced in a court of law, it would be held legally sufficient to prove the fact found.

The denial of a fair hearing is not established by proving merely that the decision was wrong. *Chin Yow v. United States*, 208 U. S. 8, 13. This is equally true whether the error consists in deciding wrongly that evidence introduced constituted legal evidence of the fact or in drawing a wrong inference from the evidence. The error of an administrative tribunal may, of course, be so flagrant as to convince a court that the hearing had was not a fair one. Compare *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149; *Kwock Jan Fat v. White*, 253 U. S. 454; *Zakonaite*

v. *Wolf*, 226 U. S. 272; *Tang Tun v. Edsell*, 223 U. S. 673. But here no hasty, arbitrary or unfair action on the part of any official, or any abuse of discretion is shown. There is no claim that the lack of legal evidence of knowledge was manifest; or that the finding was made in wilful disregard of the evidence to the contrary; or that settled rules of evidence were ignored. The procedure prescribed by the rules of the Department appears to have been followed in every respect; and the legality of that prescribed is not questioned. There is no suggestion that Tisi was not allowed to prepare for the hearing, by prior examination of the written evidence on which the warrant of arrest issued; or that he was otherwise restricted in his preparation of the defense. The hearing was conducted orally. Tisi was present and was represented by counsel. He testified fully; and the many witnesses produced by the Government were cross-examined by his counsel. He was given ample time in which to present the evidence, the argument, and a brief. Under these circumstances mere error, even if it consists in finding an essential fact without adequate supporting evidence, is not a denial of due process of law.

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*Affirmed.*